



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Easy Rent Real Estate Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, RR, RP, OLC, PSF, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for:

- a monetary Order for money owed or compensation for damage or loss
- an Order requiring the Landlord to make repairs to the rental unit
- an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement
- an Order requiring the Landlord to provide services or facilities
- authorization to reduce the rent
- to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The female Tenant stated that on March 05, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents. I therefore find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Tenant submitted numerous documents and a CD to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The female Tenant stated that the evidence was delivered to the Landlord's business office on March 17, 2015. The Agent for the Landlord stated that the evidence was delivered on March 23, 2015 or March 24, 2015. As the Landlord received the evidence, it was accepted as evidence for these proceedings.

The Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were served to the Tenant by registered mail on March 19, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties indicated they were prepared to proceed with the hearing on April 01, 2015, although both parties served outside of the timelines established by the Residential Tenancy Branch Rules of Procedure.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to repair deficiencies with the rental unit?

Is the Tenant entitled to compensation for the loss of the quiet enjoyment of the rental unit arising from deficiencies with the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2014 and that the Tenant agreed to pay monthly rent of \$4,300.00.

The Landlord and the Tenant agree that a condition inspection report was completed on August 15, 2014.

The Landlord and the Tenant agree that this rental unit is equipped with a two-sided gas fireplace. The parties agree that one side of the fireplace faces an exterior balcony and one side faces an interior room.

The parties agree that this fireplace did not function properly at the start of the tenancy; that the Landlord made several attempts to repair the fireplace; that it was eventually determined that the fireplace should not be used; and that the Tenant was told that the fireplace should not be used.

The Landlord and the Tenant agreed that the Landlord offered to compensate the Tenant for the fireplace, in the amount of \$300.00, although this compensation has never been paid. The male Tenant stated that he does not believe \$300.00 is sufficient compensation because they were not able to use the exterior balcony during the winter months as a result of the fireplace not working. He stated that this significantly impacts the value of the tenancy as they were unable to appreciate the view from the balcony during the winter. The Tenant submitted photographs of the balcony and fireplace.

The Landlord and the Tenant agree that a toilet in the rental unit was leaking and the Landlord was aware of the problem when the unit was inspected on August 15, 2014. The inspection report indicates the toilet was ``running``.

The Tenant stated that the Landlord made several attempts to repair the toilet and that it was not repaired for two or three months.

The Agent for the Landlord stated that toilet was repaired in the third week of August of 2014. She stated that the Tenant continued to report a problem with the toilet but tradespeople hired by the Landlord could not detect additional problems.

The Tenant submitted a copy of an email, dated September 27, 2014, in which the Tenant informed the Landlord that a toilet needs repair because it gets "stuck from time to time".

The Landlord submitted an invoice for a variety of repairs completed in the rental unit, dated October 04, 2014. She stated that part of this invoice was for the toilet that was repaired in August. The Landlord submitted an invoice from a plumbing company, dated November 24, 2014, which indicates that the toilet is `functioning fine`.

The Landlord and the Tenant agree that the kitchen hood fan was not functioning properly at the start of the tenancy and that the Landlord was aware of the problem when the unit was inspected on August 15, 2014. The deficiency is noted on the condition inspection report. The Landlord and the Tenant agree that the Landlord made two attempts to repair the fan and that it was eventually replaced on November 05, 2014.

The Tenant stated that the Landlord was informed that the garburator was not working when the unit was inspected on August 15, 2014. The deficiency is not noted on the condition inspection report, although the Tenant does refer to it in an email dated August 15, 2014. The Agent for the Landlord stated that the problem with the garburator was reported sometime in August and was repaired on August 23, 2014. The female Tenant agreed the garburator was repaired in a timely manner, although she cannot recall the exact date of the repair.

The Tenant stated that the sometime in October she informed the Landlord that the “dripping tap had progressed to a “streaming” tap. The Tenant submitted an email, dated October 14, 2014, in which she informs the Landlord that the problem with the kitchen tap has progressed from a “dripping” tap to a “streaming” tap.

The Tenant stated that the Landlord was informed that a kitchen tap was spewing water on November 14, 2014 and that it was repaired sometime near the end of November of 2014. The Agent for the Landlord stated that the spewing water was reported on November 11, 2014 or November 12, 2014 and was repaired on November 12, 2014.

The Tenant stated that water did not flow properly from the kitchen faucet after the problem with the spewing water was repaired. The Tenant submitted an email, dated November 17, 2014, in which she informs the Landlord that water is not flowing properly from the kitchen tap. The Agent for the Landlord stated that this problem was repaired shortly after being reported to the Landlord.

The Landlord submitted a copy of an invoice for the tap repair, which is dated November 24, 2014. She stated that the repairs were done prior to the date of the invoice. This invoice indicates that the plumber repaired the tap on two occasions, although it does not establish the dates of the repairs.

The Landlord and the Tenant agree that the several sinks were not properly attached to the counter at the start of the tenancy and that the Landlord was aware of the problem when the unit was inspected on August 15, 2014. The deficiency is noted on the condition inspection report. The Landlord and the Tenant agree that the sinks were secured and re-caulked sometime in late August.

The Landlord and the Tenant agree that a variety of furnishing were left in the rental unit prior to the start of the tenancy. The Agent for the Landlord stated that the items were not removed at the start of the tenancy because the female Tenant stated she might use them.

The female Tenant stated that at the start of the tenancy she advised the Agent for the Landlord that she did not want the furnishings, at which time she was told to ask the handyman to remove the items. She stated that she did ask the handyman to remove them but the items have never been removed. The female Tenant stated that she subsequently asked the Agent for the Landlord to have the items removed but she did not have them removed.

The Agent for the Landlord stated that the Tenant did not ask her to have the items removed until after this Application for Dispute Resolution was filed. The female Tenant stated that she did not make any references to the need to remove the furniture in writing until after this Application for Dispute Resolution was filed.

The female Tenant stated that the claim for "fused" light bulbs is a reference to light bulbs that were burned out. She stated that the Tenant did not know how to change the light bulbs because they were in high locations. She stated that the light bulbs were burned out when the tenancy started and were replaced by the Landlord sometime in October of 2014.

The Agent for the Landlord stated that there were no burned out light bulbs in the rental unit at the start of the tenancy; however as a courtesy to the Tenant some light bulbs were replaced in October of 2014. No burned out light bulbs were noted on the condition inspection report that was completed at the start of the tenancy.

The female Tenant stated that some electrical plugs did not work in the living room, which she reported to the handyman on August 20, 2014. The Agent for the Landlord stated that a problem with electrical plugs was not reported to the Landlord prior to this Application for Dispute Resolution being filed.

The female Tenant stated that the shower enclosure periodically leaked throughout this tenancy when the shower was in use. The Tenant stated that the problem was first reported in August of 2014 and the Agent for the Landlord stated that it was reported in September of 2014.

The Landlord and the Tenant agree that the Landlord has made several attempts to remedy the problem, with the latest repair being completed on December 11, 2014. The female Tenant stated that the enclosure is still leaking and that she reported the continuing problem to the Landlord on December 13, 2014. The Agent for the Landlord stated that the Tenant did not advise her that the problem had not been resolved until this Application for Dispute Resolution was filed.

The Tenant submitted an email, dated December 15, 2014, in which the Landlord asks the Tenant about the situation with the shower enclosure. The Tenant submitted an email, dated January 04, 2015, in which the Tenant informs the Landlord the shower enclosure is still leaking.

The Tenant stated that there is a still significant amount of water on the floor after the shower is used, which needs to be mopped up with towels. The Tenant submitted photographs to show a substantial amount of water on the floor.

The Landlord submitted an invoice, dated December 09, 2014, which shows repairs were made to the shower and the technician recommended that the renters test the shower after the repairs.

The Landlord and the Tenant agree that in August of 2014 the Tenant reported a problem with loose towel holders and toilet roll holders in the rental unit. The parties agree that the Landlord did not assume responsibility for repairing the issue and that the Tenant was informed they were responsible for repairs to those issues. The Tenant stated that some of the holders are simply loose and need to be tightened and some have been torn out of the wall and can no longer be used.

The Tenant is seeking compensation for the time and effort of having to deal with the numerous repairs being made in the rental unit, including providing tradespeople with access to the rental unit. The Landlord and the Tenant agree that the Agent for the Landlord told the Tenant it was their responsibility to “supervise” the rental unit during repairs.

The female Tenant stated that on one occasion the Landlord came to the rental unit, at the request of the Landlord, to “supervise” repairs. She stated that the Landlord was asked to be present during repairs approximately 20-25 times.

The Agent for the Landlord stated that an agent for the Landlord “supervised” repairs in the rental unit two or three times, although the Tenant asked for assistance approximately four or five times.

The Tenant submitted an email, dated November 27, 2014, in which the Tenant clearly informs the Landlord that she does not wish to repairs and appointments with tradespeople.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37 of the *Act* stipulates that a landlord may terminate or restrict a non-essential or non-material service or facility if the landlord gives 30 days' written notice of the termination or restriction and the Landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Appliances and furnishing are considered services or facilities by the *Act*. I find that this includes a fireplace which is not the primary heat source.

On the basis of the undisputed evidence, I find that the two-sided fireplace is not functional and that the Landlord has opted not to repair the fireplace. Although there is no evidence that the Landlord provided the Tenant with 30 days' written notice, in the approved form, that the fireplace would not be repaired, I find that the Tenant was advised that the fireplace is not being repaired.

As the fireplace does not appear to be an essential or material service or facility, I find that the Landlord has the right to prevent the Tenant from using the fireplace. I find, however, that the Landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that the absence of a fireplace limits the Tenant's ability to use the balcony on a regular basis for most of the time between September and May and for various periods for the remainder of the year, particularly during the evening. On the basis of the photographs of the balcony submitted in evidence by the Tenant, which demonstrate the area would be a pleasant sitting area, I find that the inability to use the balcony on a regular basis reduces the value of the tenancy.

Determining the resulting reduced value of a tenancy is highly subjective; however I find it reasonable to conclude that being unable to use the balcony on a regular basis reduces the value of the tenancy by \$50.00 per month for the period between April 01st and September 30th and by \$100.00 per month for the remainder of the year.

I therefore find that the Tenant is entitled to compensation of \$700.00 for the period between August 01, 2014 and March 31, 2015 in compensation for being without a fireplace on the third floor balcony. I further authorize the Tenant to reduce the monthly rent by \$50.00 for the months of May, June, July, August, and September of any year, commencing on May 01, 2015 and continuing until the fireplace can be safely used. I further authorize the Tenant to reduce the monthly rent by \$100.00 for the months of October, November, December, January, February, March, and April of any year, commencing on October 01, 2015 and continuing until the fireplace can be safely used.

As the Landlord has the right to withdraw the use of the fireplace, providing the rent is reduced accordingly, I find there is no need to issue an Order requiring the Landlord to repair the fireplace.

I find that the Tenant submitted insufficient evidence to show that the toilet which was not functioning properly at the start of the tenancy was not repaired within a timely manner. In determining this matter I find that the Tenant submitted insufficient evidence to corroborate the Tenant's claim that it was not properly repaired for approximately 2-3 months or that refutes the Landlord's claim that it was repaired in the third week of August. As the Tenant has failed to establish that the toilet was not repaired in a timely manner, I find that the Tenant is not entitled to compensation for the inconvenience of living with a faulty toilet.

In determining this matter I was influenced, in part, by the fact the inspection report indicates that the toilet is "running". While this is a deficiency that should be repaired, it does not render the toilet unusable.

While I accept that the Tenant reported additional problems with a toilet after it was repaired in August of 2014, I cannot conclude that the report is accurate. In determining this matter I was heavily influenced by the emails exchanged by the parties on November 17, 2014 and November 18, 2014, in which the Agent for the Landlord declared that when she and the Tenant tested the toilet together "it was working fine".

In determining this matter I was also influenced by the plumbing invoice, dated November 24, 2014, in which the technician declared that everything is "functioning fine" with the toilet. As the

Tenant has submitted insufficient evidence to establish that the toilet is not functioning properly, I find no reason to issue an Order requiring the Landlord to repair a toilet.

I find that a kitchen hood fan is a service or facility as defined by the *Act*. I find that the delay in repairing the fan constitutes a temporary restriction of this service or facility and that the rent should have been reduced accordingly in accordance with section 37 of the *Act*.

Although determining the resulting reduced value of a tenancy is highly subjective, I find it reasonable to conclude that being without a fully operational kitchen hood fan for the period of approximately three months reduces the value of the tenancy by \$60.00, and that the Tenant is entitled to compensation in that amount. This award was based on my understanding that the fan was functioning to some degree, but was noisy and did not work consistently.

As there is no evidence to suggest that the garburator was not repaired in a timely manner, I find that the Tenant is not entitled to compensation for the inconvenience of living without a garburator for a short period of time.

While I accept that the Landlord responded in a reasonably timely manner to two reports of a problem with the kitchen tap, I find that living with a spewing tap or a tap that delivers only a small amount of water for any period of time is an inconvenience. I therefore find that being without a properly functioning tap for a few days in November reduced the value of the tenancy by \$20.00, and that the Tenant is entitled to compensation in that amount.

As there is no evidence to suggest that the sinks were not secured and re-caulked in a timely manner, I find that the Tenant is not entitled to compensation for the inconvenience of living with the sinks for a short period of time.

As the hood fan, toilet, garburator, kitchen tap, and sinks have been repaired or replaced; I find there is no need to issue an order requiring the Landlord to remedy these deficiencies.

I find that the Tenant submitted insufficient evidence to establish that the Tenant asked the Landlord to remove furnishings that were left in the rental unit prior to the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's claim that the Landlord did not comply with a request to move the items or that refutes the Agent for the Landlord's testimony that the Tenant wanted them left in the unit and did not ask to have them removed.

As the Tenant has failed to establish that the Landlord knew that the Tenant wanted the furnishings removed, I find that the Tenant is not entitled to compensation for any inconveniences associated to the furnishings being left in the rental unit.

As the Landlord is now clearly aware that the furnishings are not wanted, I Order the Landlord to remove any of the furnishings that were left in the rental unit prior to the start of the tenancy, unless the Tenant advises the Landlord, in writing, that they wish to use the items. The Landlord has until April 30, 2015 to remove the unwanted furnishings. In the event they are not removed by April 30, 2015, I authorize the Tenant to reduce the monthly rent by \$50.00, effective May 01, 2015, and to continue to reduce the monthly rent by \$50.00 until such time as the items have been removed.

I find that the Tenant submitted insufficient evidence to establish that light bulbs were burned out at the start of the tenancy. In reaching this conclusion I was heavily influenced by the condition inspection report, which does not note any burned out light bulbs and by the Agent for the Landlord's testimony that the light bulbs were all working at the end of the tenancy.

Although Tenants are typically required to replace light bulbs that burn out during a tenancy, I accept the undisputed evidence that the Landlord replaced some light bulbs for the Tenant in October of 2014. As there is insufficient evidence to conclude that the Landlord was obligated to replace light bulbs, I grant no compensation for any delay in replacing the light bulbs and I find no reason to Order the Landlord to replace any light bulbs in the rental unit.

I find that the Tenant has submitted insufficient evidence to establish that a problem with electrical outlets has been reported to the Landlord. In reaching this decision I was heavily influenced by the absence of evidence that corroborates the Tenant's claim it was reported or that refutes the Landlord's submission that it was not reported prior to the Tenant filing this Application for Dispute Resolution.

As there is no evidence the issue with the electrical outlets was reported to the Landlord prior to the Tenant filing this Application for Dispute Resolution, I find that the Tenant is not entitled to compensation for this issue.

As the Tenant is entitled to a properly functioning electrical system, I Order the Landlord to examine all of the electrical outlets in the rental unit and to repair any non-functioning outlets, prior to April 30, 2015. In the event any malfunctioning outlets are not repaired by April 30, 2015, I authorize the Tenant to reduce the monthly rent by \$5.00, effective May 01, 2015, and to continue to reduce the monthly rent by \$5.00 until such time as the matter has been resolved.

On the basis of the evidence presented, I find that the Landlord made reasonable efforts to respond to the Tenant's reports of a leaking shower enclosure until December 15, 2014. On the basis of the email submitted in evidence, I find that the Tenant reported a continued problem with the shower, via email, on January 04, 2015. There is no evidence that the Landlord responded to that report or that the problem has been rectified.

In spite of the efforts of the Landlord, I find that the Tenant is entitled to compensation for the inconvenience of wiping up water that leaked from the shower, in the amount of \$180.00, which is \$20.00 per month.

As the Tenant is entitled to a properly functioning shower enclosure, which is a fixture provided with the tenancy, I Order the Landlord to repair the shower enclosure prior to April 30, 2015. In the event it is not repaired by April 30, 2015, I authorize the Tenant to reduce the monthly rent by \$20.00, effective May 01, 2015, and to continue to reduce the monthly rent by \$20.00 until such time as the matter has been resolved.

Section 32 of the Act requires tenants to repair damage that is caused by their action or neglect, but it does not require them to make repairs for reasonable wear and tear. I find that toilet paper holders and towel racks do periodically become loose over time, which constitutes normal wear and tear. I therefore find that the Tenant was not obligated to tighten the racks/holders that became loose.

I find it reasonable to conclude that a rack/holder that is not tightly secured to the wall could be pulled out of the wall due to normal use. I therefore find it reasonable to conclude that racks/holders that have been pulled out of the wall have been damaged, at least in part, by lack of maintenance. I therefore cannot conclude that the Tenant is responsible for repairing those items.

I find that the Tenant is entitled to compensation for the inconvenience of living with faulty racks/holders, in the amount of \$20.00.

As the Tenant is entitled to a properly functioning towel racks, etc. I Order the Landlord to repair the any loose or damaged towel racks and paper towel holders prior to April 30, 2015. In the event these are not repaired by April 30, 2015, I authorize the Tenant to reduce the monthly rent by \$5.00, effective May 01, 2015, and to continue to reduce the monthly rent by \$5.00 until such time as the matter has been resolved.

Section 32 of the *Act* requires a landlord to maintain the rental unit. This includes scheduling appointments and letting tradespeople into the rental unit when necessary. Although tenants frequently prefer to facilitate these repairs to accommodate their own schedules and to be present during the repairs, they are not obligated to do so.

On the basis of the undisputed evidence, I find that the Tenant clearly informed the Landlord that they did not wish to coordinate/supervise repairs to the rental unit and, that the Landlord breached their obligation to coordinate/supervise repairs. Given the amount of repairs in the rental unit, I find that this placed a significant burden on the Tenant, which breached the Tenant's right to the quiet enjoyment of the rental unit. I find that the Tenant is entitled to compensation for this breach, in the amount of \$1,000.00.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to compensation, in the amount of \$100.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,080.00, which is comprised of \$1,980.00 in compensation for deficiencies with the rental unit and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations, I hereby authorize the Tenant to reduce one monthly rent payment by \$2,080.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 08, 2015

